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C O N F I D E N T I A L SECTION 01 OF 03 ADDIS ABABA 000003

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TAGS: [PHUM](#) [KJUS](#) [KDEM](#) [PGOV](#) [ET](#)
SUBJECT: ETHIOPIA: POLITICAL TRIAL WRAPS UP, CIVIL SOCIETY
LEADERS FOUND GUILTY

REF: ADDIS ABABA 02284 AND PREVIOUS.

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Classified By: AMBASSADOR DONALD YAMAMOTO. REASON 1.4(D).

¶1. (SBU) SUMMARY: On December 26, the trial of civil society leaders Daniel Bekele and Netsanet Demissie came to a conclusion after nearly two years of proceedings. In a bittersweet ending, the two remaining defendants from among the 131 originally charged in the political trial of Hailu Shawel et al, were found guilty, though under lesser charges than originally filed against them. In a pair of bizarre hearings on December 24 and 26, in which the bench's final verdict began with heaping praise for the defendants, followed by outlining the thorough and overwhelming nature of their defense, it was announced that the testimony of two prosecution witnesses was ultimately the deciding factor in their guilt. The very questionable testimony of these two particular witnesses (on November 2 and 6, 2006), followed by a comprehensive cross-examination, left most courtroom observers shocked and judges rolling their eyes. The bench nevertheless decided that the defense did not properly discount this testimony. While they concluded that this was not enough to convict the defendants on the original charge of "Outrages against the Constitution," there was enough evidence to convict them on a substitute charge of "Provocation to Commit Crimes against the State." They were sentenced to two-and-a-half years in prison. As they have already served two years and one month, and with the remainder expected to be assigned as probation, these two are expected to leave prison within the next week. International observers raised the questionable (though legal under Ethiopian law) conviction on charges not raised during the proceedings. The Ambassador made a special effort to attend the conviction hearing and noted that the conviction raises concerns over due process and the need for judicial reform.
END SUMMARY.

MOST OBSERVERS POSITIVE AFTER TWO YEAR SAGA

¶2. (C) On December 26, after 25 months in jail and a trial that lasted almost two years, the bench in the case of Hailu Shawel et al read the final verdict for the two remaining defendants--civil society leaders Daniel Bekele and Netsanet Demissie. The verdict had been delayed several times over

the previous three months, following delays by the prosecution and the replacement of one judge (from the three-judge panel). Most international observers from diplomatic missions and NGOs, after having followed the course of this trial, were cautiously optimistic that Daniel and Netsanet would receive a positive ruling. They were two of only four people to defend their case, from among the 131 originally charged in this file. Several had been freed during the course of the trial, with the remaining political leaders and journalists found guilty after having refused to defend their case (reftel). While those political leaders and journalists found guilty were offered and accepted the opportunity to sign a pardon request and subsequently were released from prison, Daniel and Netsanet refused, instead choosing to present a defense. As licensed attorneys themselves, they and their high-profile hired attorney handled their case admirably. Though the prosecution's evidence had been very weak to begin with, leading head judge Adil to rule that there was no need for a defense in the first place, they thoroughly and comprehensively disproved or discredited all of the prosecution's evidence. By the end of the case, all international observers were left with no doubt as to what the ruling should be--the question remained whether the judiciary was independent enough to issue the appropriate not guilty ruling or whether the GoE's influence would push them to a compromise ruling.

COURT HANDS OUT COMPLIMENTS, THEN HANDS DOWN GUILTY VERDICT

¶3. (U) In a December 24 session, third judge Mohammed Amin began by reviewing the testimony of all the defense witnesses, followed by summarizing the defense's documentary evidence. The substance and tone of his review was very positive, leading many observers to believe that indeed the

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verdict would be positive for the defendants. Based on witness testimony, he said, it was proven that the defendants were not part of the Coalition for Unity and Democracy (CUD), had not taken part in the June or November 2005 demonstrations, and had publicly urged opposition parliamentarians to join parliament. Further, it was shown that they had done extraordinary work in brokering an agreement between the largest opposition groups and the ruling EPRDF, with the aim of addressing the opposition's post-election concerns. Mohammed continued by reviewing the prosecution's case, noting that they failed to prove many of the accusations raised against the defendants. He even pointed out that some of the witnesses had contradicted themselves in their own testimony and were therefore not credible.

¶4. (U) However, after more than an hour review of the case, much of it sounding very positive for the defense, Mohammed abruptly announced that Daniel and Netsanet were unable to disprove (or did not address) the testimony of two witnesses. One of these witness had testified that he met Daniel at the CUD headquarters, at which time Daniel allegedly urged him to "recruit youth to topple the ruling party." The other witness said that Netsanet gave him flyers to pass out, asking people to protest against the ruling Ethiopian People's Revolutionary Democratic Force (EPRDF). The witness against Netsanet had earlier been singled out by Mohammed as of the witnesses whose testimony had been said to be (at least partially) discredited, as a subsequent defense witnesses testified that Netsanet was elsewhere on the day they were alleged to have met.

¶6. (U) After review of the prosecution and defense's cases, Mohammed said that there had not been enough evidence to prove that the two had committed "Outrages against the Constitution," for which they had been charged. Lead judge Adil Ahmed then took over and announced that in a two-to-one decision, the bench found them guilty, but under a reduced

charge of "Provocation and Preparation to Commit Crimes Against the State," which carries a sentence from 10 days to 10 years. (NOTE: Adil had ruled earlier in the year that the prosecution's case did not even warrant a defense, and therefore was not permitted to change his vote to guilty.) (NOTE CONTINUED: In Ethiopian law, judges can change the charge against a defendant at any point in a trial. END NOTE.) He then called for a ten-minute break, during which time the prosecution was to prepare recommended sentences and the defense could prepare extenuating circumstances.

17. (U) For their part, the prosecution said that the defendants are educated and trained lawyers, and therefore knew the consequences of their actions. As civil society leaders they had been trusted to work in an ethical way, the prosecution said, and as they violated that, they should receive the maximum "rigorous" sentence, which would also restrict their civil rights (i.e. voting or holding public office) once released. The defendants, appearing very dejected, made very brief statements. Daniel said, "We have pursued our case and defended from our hearts. We didn't lie. Based on this, we ask the court to give a final sentence." Netsanet followed by saying, "I will not add anything. The court understands we are innocent." Lead judge Adil then announced that sentencing would be two days later on December 26.

18. (U) On December 26, Mohammed once again began in a tone contradicting the ultimate outcome. He spoke in very generous praise of the defendants, saying among other things that they "took courageous action in post-election work with political parties," "have good character," "fought for supremacy of law," and "made significant contribution to the rights of citizens (in their work)." Based on this, the court would not enforce "rigorous" punishment and would not have their civil rights restricted. In the end, Mohammed announced, the bench decided on a sentence of two years and six months. As Daniel and Netsanet had been in prison for two years and one month, they will now be eligible for release. Under Ethiopian law, when a punishment is not "rigorous," a convict will be allowed out of prison on probation after serving two-thirds of their sentence. Their lawyer told Poloff that he expects them to be released within days.

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COMMENT: GOE SENDS CIVIL SOCIETY LOUD AND CLEAR MESSAGE

19. (C) While friends and family of civil society activists Daniel Bekele and Netsanet Demissie will celebrate their anticipated release from prison following more than 25 months of incarceration, Ethiopia will continue to feel the repercussions of their guilty verdict. Their trial, like that of their political leader and journalist co-defendants, served as a litmus test for judicial independence in Ethiopia, in the politically charged, post-2005 election atmosphere. Popular opinion of the case had long since been passed by many Ethiopian citizens and international observers alike--that this was a political trial and that the GoE was using these court proceedings to punish and undercut those opposed to the Government, particularly the leadership of the CUD and their supporters among independent journalists and civil society. The CUD leadership and journalists returned the political volley, refusing to defend themselves, ultimately leaving the court a relatively easy decision of guilt and forcing the international community's hand to ultimately win their release. Daniel and Netsanet on the other hand, long maintaining that they have nothing to do with the CUD leaders, refused to sign a pardon request and chose to defend their case, politically motivated or not.

110. (C) To hear the case presented by both the prosecution and defense (Post had an observer at every session), leaves

no room for question as to whether Daniel and Netsanet committed the crimes they were accused of--they are not guilty. Given the high profile of this case, it would normally be expected that the GoE would have used its best and brightest prosecutors to present this case. However, the prosecution team was regularly outwitted and overwhelmingly outmatched in the courtroom opposite Daniel and Netsanet. Cross examination of prosecution witnesses led international observers to conclude that they were coached and coerced by the prosecution. Documentary evidence against them was neutral at best, and obviously doctored at worst. The defense, by contrast, was thorough, well-prepared, unrelenting and professional. Regardless of initial impressions of the merits of the case, no observer was left with any doubt of their innocence. Even in their final ruling, the judges spent the majority of the time praising Daniel and Netsanet, while very opaquely explaining their verdict of guilt. The Ambassador attended the Christmas Eve hearing during which the bench read the guilty verdict. Of concern is the conviction on charges not raised directly during previous trial proceedings. Though legal under Ethiopian jurisprudence, it raises serious questions over due process and the need for further judicial reforms

¶11. (C) Daniel and Netsanet's guilty verdict lends significant weight to the case of the initial pessimists--there was never any chance that the high-profile political leaders, journalists and civil society representatives were to receive a fair case. Beyond the effect on the defendants, the repercussions of the trial have been significant for Ethiopia. The remaining political opposition is now splintered and ineffectual, media outlets are extremely cautious and not willing to criticize, question or confront the government for fear of arrest, and civil society has taken a noticeably lower posture. At this time, none of these groups will likely challenge the ruling party and government during the upcoming local elections scheduled for April 2008. The conviction of the two civil society leaders who led domestic election monitoring efforts in 2005 will particularly send a cautionary message to potential Ethiopian election monitors for the upcoming local elections.

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